

EXHIBIT A

Deposition of Kirk Houtchens - Taken July 26, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA)

Plaintiffs,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF KIRK HOUTCHENS

Taken at the law offices of Mitchell, Williams,
Selig, Gates & Wooyard, 5414 Pinnacle Point Drive Suite
500, Rogers, Arkansas 72758, on July 26, 2007, at 11:36
a.m.

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| 4 Riggs, Abbey, Neal, Turpen | 4 |
| 5 Orbison & Lewis, P.C. | 5 EXHIBITS |
| 6 Frisco Building | 6 Plaintiff's Exhibit Marked |
| 7 502 West Sixth Street | 7 |
| 8 Tulsa, Oklahoma 74119-1010 | 8 1A (7/26/07 Memorandum from Scott McDaniel) --- 39 |
| 9 (918) 587-3161 | 9 1B (List of Peterson Farms Active Grower Watersheds) ----- 36 |
| 10 (918) 583-1549 Fax | 10 3 (3/7/07 Email from Jamie Burr) ----- 9 |
| 11 MR. A. SCOTT McDANIEL FOR THE DEFENDANT | 11 3A (Poultry Litter Production for The Illinois River Watershed in Oklahoma) ----- 21 |
| 12 320 S. Boston Avenue, Suite 700 PETERSON FARMS | 12 4 (Individual Grower History) ----- 14 |
| 13 Tulsa, Oklahoma 74103 | 13 5 (Oklahoma Statutes Annotated Currentness Title 82, Section 1451) ----- 26 |
| 14 (918) 382-9200 | 14 6 (The Oklahoma State Courts Network Document) ----- 49 |
| 15 (918) 382-9282 Fax | 15 7 (Poultry Water Quality Handbook) ----- 51 |
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| 5 MR. PAUL E. THOMPSON FOR THE DEFENDANT | |
| 6 Bassett Law Firm GEORGES, INC. | |
| 7 P.O. Drawer 3618 | |
| 8 Fayetteville, Arkansas 72702-3618 | |
| 9 (479) 521-9996 | |
| 10 (479) 521-9600 Fax | |
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| 1 APPEARANCES (Cont.) | 1 THE VIDEOGRAPHER: The time is 11:36. This |
| 2 MS. THERESA NOBLE HILL FOR THE DEFENDANT | 2 is the beginning of tape 1 of the deposition of Kirk |
| 3 MR. JOHN TUCKER (By Telephone) CARGILL TURKEY | 3 Houtchens. We're on the record. |
| 4 Rhodes, Hieronymus, Jones, PRODUCTION | 4 KIRK HOUTCHENS, having been called upon to |
| 5 Tucker & Gble, PLLC CARGILL, INC. | 5 testify in the form of a deposition and having been duly |
| 6 P.O. Box 21100 | 6 sworn, testified as follows, to wit: |
| 7 Tulsa, Oklahoma 74121-1100 | 7 EXAMINATION |
| 8 (918) 582-1173 | 8 BY MR. RIGGS: |
| 9 (918) 592-3390 Fax | 9 Q. Would you state your full name for the record, |
| 10 | 10 please? |
| 11 MR. ROBERT E. SANDERS FOR THE DEFENDANT | 11 A. Casey Kirk Houtchens. |
| 12 Young Williams, P.A. CAL-MAIN FOODS, INC. | 12 Q. Mr. Houtchens, for whom are you employed? |
| 13 P.O. Box 23059 CAL-MAIN FARMS, INC. | 13 A. Peterson Farms. |
| 14 Jackson, Mississippi 39201 | 14 Q. What is your job with Peterson Farms? |
| 15 (601) 948-6100 | 15 A. I'm the live production manager. |
| 16 (601) 355-6136 Fax | 16 Q. How long have you held that position? |
| 17 MS. SHERRY P. BARTLEY FOR THE DEFENDANT | 17 A. Since February of '07. |
| 18 Mitchell, Williams, Selig, PETERSON FARMS, INC. | 18 Q. Were you employed by Peterson Farms prior to that |
| 19 Gates & Woodyard, PLLC | 19 time? |
| 20 425 W. Capitol Avenue, Suite 1800 | 20 A. Yes. |
| 21 Little Rock, Arkansas 72201-3525 | 21 Q. What was your job just before assuming this current |
| 22 (501) 688-8800 | 22 job? |
| 23 (501) 688-8807 Fax | 23 A. I was a broiler service technician and building |
| 24 MS. JENNIFER GRIFFIN (By Telephone) FOR THE DEFENDANT | 24 coordinator. |
| 25 Lathrop & Gage WILLOW BROOK FOODS | 25 Q. How long have you worked for Peterson Farms? |
| 1 314 E. High Street | |
| 2 Jefferson City, Missouri 65101 | |
| 3 (573) 761-5006 | |
| 4 (573) 893-5398 Fax | |
| 5 | |
| 6 Also Present: Ms. Janet Wilkerson | |
| 7 Mr. Blake Trolinger, Videographer | |
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| <p>1 Q. (Mr. Riggs continued.) Well, for what period of 2 time could you provide that information with the data that 3 we've discussed? 4 A. I'm not very sure, but I -- I'm sure you could for 5 the -- you know, for the last year or two. But, there 6 again -- then again, I'd only be speculating. 7 Q. Who would know more about that than you in your 8 company? 9 A. Well, I -- I would assume Ray Wear would possibly 10 know. He's in the office, I'm not. That may be, you 11 know, may be something you could ask Janet Wilkerson this 12 afternoon. 13 Q. Who in the company would be better prepared to give 14 us the information sought by item No. 7? 15 MR. McDANIEL: Object to the form, 16 suggesting that he's not adequately prepared. 17 Q. (Mr. Riggs continued.) Well, what did you do to 18 prepare to answer No. 7? 19 A. Well, like I stated earlier, I was under the 20 impression that all this information was already sent to 21 the plaintiff in the records for each grower file for 22 every broiler grower and breeder grower in the IRW. 23 Q. Are you under the impression or were you also told 24 that we would, therefor, not have a right to talk to you 25 about that?</p> | <p>1 A. Yes. 2 Q. Can you tell me how much time you spent preparing to 3 testify for the company regarding those topics? 4 A. Approximately eight hours. 5 Q. What did you do during that eight hours? 6 A. I looked over different records, different files. 7 Q. What kind of records? 8 A. Feed formulas, the Exhibit 1B, which I've produced, 9 different analysis, litter analysis, ingredient analysis, 10 that type of nature of things. 11 Q. Okay. Anything else with regard -- which would 12 relate to items No. 6 and 7 on the list of topics? 13 A. None -- none other than 1B. 14 Q. Are there other records kept in the company besides 15 the one you've chosen to bring today, which would have a 16 bearings on the subject matter of No. 6 and 7 on the list? 17 MR. McDANIEL: Object to the form. It's 18 been asked and answered. 19 A. Again, it would be the same files that we even 20 looked today, individual grower records, the grower's 21 files that would, you know, show how many birds were 22 placed, how many flocks he'd raised, how many head he 23 sold, how much they weighed. 24 Q. (Mr. Riggs continued.) Is there nowhere within the 25 company records totals of birds produced or is it all just</p> |
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| <p>1 A. Could you say that again, sir? 2 Q. Just because we have documents, does that -- did 3 someone tell you we wouldn't have a right to inquire of 4 you about what's in those documents? 5 MR. McDANIEL: I haven't objected to your 6 inquiry, David. 7 A. No, I did not. 8 Q. (Mr. Riggs continued.) I've marked as 1A a document 9 which was provided us today by your counsel. Do you 10 recognize that? 11 (Wherein, Plaintiff's Exhibit 1A was marked.) 12 A. I've not seen this before, but I -- I can read. 13 That's all I recognize. 14 Q. Give me each and every number on that list there 15 that your name is beside. Would you read into the record 16 the numbers your name is beside? 17 A. Three, 4, 5, 8, 6, 7, 9, 10, 11, 12, 13, 14/15, 18 16/17, 18/19, 20, 21, 22, 23, 25, 31. Oh, and 34. 19 Q. What is your understanding about your duty with 20 respect to each of those numbered items? 21 A. My understanding is that I am the corporate witness 22 for Peterson Farms on the topics in each of these items. 23 Q. Okay. And those topics, do you understand, 24 correspond to the numbered topics in Exhibit No. 1 to your 25 deposition?</p> | <p>1 left to the individual grower file? 2 A. The individual growers have a grower number, and 3 that's how we recognize those files or those -- those 4 contract growers. 5 Q. Are you saying no one in the company looks at total 6 numbers by these individual growers taken together? 7 A. Not that I'm aware of. I haven't personally as a 8 live production manager. 9 Q. The company knows how many birds it processes for 10 the market each year, doesn't it? 11 A. I believe so. 12 Q. Does the company know, then, how many birds it 13 processes for the market each year by watershed? 14 A. I don't believe we do. We have -- for our records 15 and our analysis, we -- we look at just the overall 16 picture. 17 Q. Let's look at Nos. 10 and 11 on the list of topics 18 you were to testify about today. Number 10 says, "The 19 amount of poultry waste generated during the lifetime of 20 an individual bird specified by bird types owned by you 21 within the IRW." 22 I think I've covered that with you, and I think you 23 told me that you don't know. Is that correct? 24 A. Yes, sir. 25 Q. And did anyone within company have any information</p> |

11 (Pages 38 to 41)

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| <p>1 Q. Yes, sir.</p> <p>2 A. I don't believe we do, but that's not really -- I'm</p> <p>3 not involved in that --</p> <p>4 Q. All right.</p> <p>5 A. -- part of the company.</p> <p>6 Q. All right. Has the company ever had an</p> <p>7 environmental division?</p> <p>8 MR. ELROD: I'm sorry, what's the last word,</p> <p>9 David?</p> <p>10 MR. RIGGS: Environmental division.</p> <p>11 MR. ELROD: Division. I'm sorry.</p> <p>12 A. There again, I'd really rather for that to be Mrs.</p> <p>13 Wilkerson.</p> <p>14 Q. (Mr. Riggs continued.) Okay. All right. Are there</p> <p>15 employees in Peterson, regardless of whether or not</p> <p>16 there's a specific division in the company devoted to this</p> <p>17 area, but are there employees in Peterson Farms, Inc., who</p> <p>18 have duties regarding environmental matters?</p> <p>19 A. I'm -- I believe we do, but that would be better to</p> <p>20 ask Mrs. Wilkerson. You know, we -- we have our -- our</p> <p>21 own facilities in Decatur, so I'm -- I'm sure we have</p> <p>22 environmental people there because we have, you know,</p> <p>23 regulations to uphold there. If that's what you're</p> <p>24 asking, if we have environmental people for our -- our</p> <p>25 company.</p> | <p>1 the environment?</p> <p>2 MR. McDANIEL: Object to the form.</p> <p>3 A. Well, there again, I -- I think that Peterson Farms,</p> <p>4 and I'm not going to speak for anyone else on this, but</p> <p>5 just from reading this, I believe this is, you know --</p> <p>6 part of it is publicity, and we do care about anybody's</p> <p>7 watershed, anybody's scenic rivers, whatever state they're</p> <p>8 in. We still believe that -- that the litter that the</p> <p>9 growers own is being applied properly through their</p> <p>10 nutrient management plans through state people that are a</p> <p>11 lot better trained at this and, you know, they're --</p> <p>12 they're educated in this. This is their specialty, this</p> <p>13 is their career. So I believe that's our stand, and</p> <p>14 that's -- that's why I answer that way.</p> <p>15 Q. (Mr. Riggs continued.) Do you know who Ron Mullikin</p> <p>16 is?</p> <p>17 A. Yes.</p> <p>18 Q. Who -- who is Ron Mullikin?</p> <p>19 A. I don't know him very well. He used to be an</p> <p>20 employee with Peterson Farms.</p> <p>21 Q. What period of time was it that he worked there?</p> <p>22 A. I'm not really sure. He -- I didn't work with him.</p> <p>23 Probably late '90s.</p> <p>24 Q. Was he someone who had environmental</p> <p>25 responsibilities for Peterson?</p> |
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| <p>1 Q. Well, can you identify environmental concerns that</p> <p>2 Peterson Farms has?</p> <p>3 MR. McDANIEL: Object to the form.</p> <p>4 A. Peterson Farms, I believe we have to -- I mean, we</p> <p>5 have runoff issues we worry about with the feed mill or</p> <p>6 with the hatcheries or, you know, with the processing</p> <p>7 plant.</p> <p>8 Q. (Mr. Riggs continued.) What about in the poultry</p> <p>9 waste as used, when the Water Quality Handbook uses it,</p> <p>10 after its been land applied?</p> <p>11 MR. McDANIEL: Object to the form.</p> <p>12 Q. (Mr. Riggs continued.) Do you have an environmental</p> <p>13 concern about that as a company?</p> <p>14 A. We have a concern about it if it's mishandled.</p> <p>15 Q. Do you agree that poultry waste, as that term is</p> <p>16 used in the Water Quality Handbook you recommended to all</p> <p>17 your growers, produced by chickens owned by Peterson Farms</p> <p>18 in the Illinois River Watershed does adversely affect the</p> <p>19 quality of water in that watershed?</p> <p>20 MR. McDANIEL: Object to the form.</p> <p>21 A. I don't believe we feel like it adversely affects</p> <p>22 the quality of water if it's applied properly.</p> <p>23 Q. (Mr. Riggs continued.) Then why would you recommend</p> <p>24 hauling a lot of it out or creating buffer zones or using</p> <p>25 alternatives for it in an ad that's designed to protect</p> | <p>1 A. I -- the last I knew -- I just thought he worked in</p> <p>2 human resources as like a trainer or something.</p> <p>3 Q. Let me hand to you an exhibit. It's a two-page</p> <p>4 document. Number 9, I think it is. Take a minute to look</p> <p>5 (Wherein, Plaintiff's Exhibit 9 was marked.)</p> <p>6 A. I didn't read it all, but I looked at all of it --</p> <p>7 Q. Okay.</p> <p>8 A. -- if you're ready.</p> <p>9 Q. It says it's a memo, interoffice memo, to Dan</p> <p>10 Henderson. I believe you told he was the president of the</p> <p>11 company. Right?</p> <p>12 A. Yes.</p> <p>13 Q. At one time.</p> <p>14 A. Yes, sir.</p> <p>15 Q. And it's dated March 27th, 1998. Would that have</p> <p>16 been a time when Mr. Henderson was president?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. And it has copies to Vic Evans and Janet Wilkerson.</p> <p>19 Who is Vic Evans?</p> <p>20 A. At the time, Vic Evans was our CEO.</p> <p>21 Q. He's no longer your CEO?</p> <p>22 A. No, sir.</p> <p>23 Q. Do you know what Miss Wilkerson's job was at that</p> <p>24 time?</p> <p>25 A. I believe she was vice president of human resources.</p> |

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| <p>1 Q. Okay. Mr. Mullikin says in this letter to the 2 company president in 1998, "In the past few months I've 3 been exposed to a wealth of information and individuals in 4 the poultry industry. I would like to share with you some 5 of my views on where we are, and where we may be headed on 6 the poultry litter issue. 7 "I personally have no opinion about whether or not 8 the integrator or the grower owns the litter. I do feel 9 without any doubt that as time passes, we the integrator 10 will be found to liable for it and the affect it has on 11 our environment." 12 Do you know if, as a result of this written opinion 13 expressed to the president by Mr. Mullikin, whether or not 14 there was within the company around that time a discussion 15 about the contents of that statement? 16 A. No, I don't. 17 Q. Do you remember any discussions within the company 18 about who should take responsibility for the litter, and 19 to use Mr. Mullikin's words, the effect it has on the 20 environment? 21 MR. McDANIEL: Object to the form. 22 A. No, I don't. 23 Q. (Mr. Riggs continued.) Were you personally ever 24 involved in any discussions about who should take 25 responsibility for the poultry litter produced by the</p> | <p>1 address the environmental need to stop applying litter to 2 local pasture lands? 3 MR. McDANIEL: Object to the form. 4 A. Well, I don't know -- personally, I wasn't involved 5 of anything as a result of this memo. I just -- I know of 6 all the things that have been done since '97 to present. 7 Q. (Mr. Riggs continued.) To stop applying litter to 8 local pasture lands to address environmental needs? 9 MR. McDANIEL: Object to the form. 10 A. No, I don't. 11 Q. (Mr. Riggs continued.) You don't know of anything 12 the company's done in response to -- 13 A. In response to this memo? 14 Q. -- Mr. Mullikin's statement that the company'd be 15 best served to address the environmental need to stop 16 applying litter to local pasture land? 17 MR. McDANIEL: Object to the form. 18 A. No, not directly related to this memo, I don't. I 19 know of things we've done since -- 20 Q. (Mr. Riggs continued.) Okay. 21 A. -- '97, but I can't say it was because of this memo. 22 Q. Okay. 23 A. I just -- 24 Q. What -- what things have you done which would 25 address the environmental need to stop applying litter to</p> |
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| <p>1 company's chickens? 2 A. No, I didn't. 3 Q. Do you know if any of the policies of the company 4 changed with respect to the question of who should take 5 responsibility for the litter produced by its chickens as 6 a result of this memorandum by Mr. Mulligin to president 7 Henderson? 8 A. No, I don't. 9 Q. Let me ask you to look at the last paragraph of the 10 Mullikin memorandum. It says, "Dan," meaning Dan 11 Henderson. "I feel the direction Peter Farm" -- "Peterson 12 Farms and all integrators would best be served to focus 13 its resources towards, would be alternative uses. Things 14 such as using litter as bedding, feed, fertilizer, and 15 fuel are just a few of the uses I've found some 16 information on. Each of these uses has its own set of 17 benefits and short-comings. But they all address the 18 environmental need to stop applying litter to our local 19 pasture lands." 20 Now, that memo was written over nine years ago, and 21 he said in the last words of the memo, I'm quoting, 22 "integrators would be best served to focus their resources 23 towards all" -- "addressing the environmental need to stop 24 applying litter to our local pasture lands." 25 What has Peterson Farms done since that time to</p> | <p>1 local pastures? 2 MR. McDANIEL: Object to the form. 3 A. There again, Peterson Farms requires that its 4 growers have nutrient management plans through their -- 5 the appropriate state agencies, and I know that is one 6 thing. Now, whether that allows them to apply litter on 7 -- on their land or not would also -- it just depends on 8 their plan, what their nutrient plan is and their soil 9 samples. 10 Q. (Mr. Riggs continued.) But this says not to apply 11 in any particular way but to stop applying it, doesn't it? 12 He says, "There's an environmental need to stop applying 13 litter to local pasture lands," doesn't he? 14 A. Looks like he says that the alternative methods 15 address the environment need to stop applying litter, but 16 this, basically, is leading on -- I don't -- just reading 17 it, I'm not trying to interpret what he was thinking when 18 he wrote it, but that's what it looks like to me. 19 Q. Let me hand you Exhibit 10, another memorandum from 20 Mr. Mullikin. 21 (Wherein, Plaintiff's Exhibit 10 was marked.) 22 This is about three months later, I guess. It's 23 July 24th, 1998. Sent to Dan Henderson, Gene Wilmoth, 24 Sean Holcombe, Rodney Dunnam, and Janet Wilkerson. Let me 25 first ask you who is Gene Wilmoth?</p> |

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| <p>1 A. Gene Wilmoth was our executive VP of production.</p> <p>2 Q. Is that the job you now have? Is that --</p> <p>3 A. I'm just like a production manager.</p> <p>4 Q. Okay.</p> <p>5 A. He's retired.</p> <p>6 Q. Okay. Sean Holcombe. Who is he?</p> <p>7 A. He was a former breeder/manager.</p> <p>8 Q. Rodney Dunnam?</p> <p>9 A. Rodney has had several capacities in the company,</p> <p>10 and at that time I'm not sure what his position was. It</p> <p>11 might have been buy -- grain buyer.</p> <p>12 Q. Okay. Was Dan Henderson still president in July of</p> <p>13 '98?</p> <p>14 A. Yes, sir.</p> <p>15 Q. This memo does deal specifically with the Spavinaw</p> <p>16 Eucha Watershed. Let me ask you, have you seen it before?</p> <p>17 A. No, I haven't.</p> <p>18 Q. Okay. In the middle paragraph Mr. Mullikin says,</p> <p>19 quote, We need to find and develop new plans for waste</p> <p>20 management that work for our growers. The meeting was</p> <p>21 helpful for only two growers, of which one was ours. Out</p> <p>22 of 37 fields, 31 had too high of a phosphorous level,</p> <p>23 which was anything above 300 pounds. This meant that</p> <p>24 those who were in that range couldn't fully develop their</p> <p>25 plan or put any more litter on their fields. Our growers</p> | <p>1 Q. (Mr. Riggs continued.) This was a survey testing 37</p> <p>2 fields in the Spavinaw Eucha Watershed, and 31 had too</p> <p>3 much phosphorus to accommodate any more litter. I'm</p> <p>4 asking if Peterson Farms has any evidence which would show</p> <p>5 or suggest that a survey of fields in the Illinois River</p> <p>6 Watershed would produce substantially different results.</p> <p>7 MR. McDANIEL: Object to the form.</p> <p>8 A. No, we don't have any evidence of that.</p> <p>9 Q. (Mr. Riggs continued.) Are the practices regarding</p> <p>10 how poultry litter is managed and utilized any different</p> <p>11 for Peterson Farms' growers in the Illinois River</p> <p>12 Watershed from the practices of its growers in the Eucha</p> <p>13 Spavinaw Watershed?</p> <p>14 MR. McDANIEL: Time frame? Can you specify</p> <p>15 a time frame?</p> <p>16 MR. RIGGS: Well, it says currently.</p> <p>17 MR. McDANIEL: Okay.</p> <p>18 A. Currently?</p> <p>19 Q. (Mr. Riggs continued.) Yeah.</p> <p>20 A. Yeah, the practices would be different because of</p> <p>21 the Tulsa settlement.</p> <p>22 Q. The use of poultry litter is more restrictive in the</p> <p>23 Eucha Water -- Spavinaw Watershed than the Illinois</p> <p>24 Watershed at present. Right?</p> <p>25 MR. McDANIEL: Object to the form.</p> |
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| <p>1 feel as though they have nowhere left to turn."</p> <p>2 Do you understand what Mr. Mullikin was referring to</p> <p>3 in those comments, this 31 out of 37 fields had too much</p> <p>4 phosphorous?</p> <p>5 MR. McDANIEL: Object to the form.</p> <p>6 A. I believe he's saying that 37 out of 31 were above</p> <p>7 300 pounds.</p> <p>8 Q. (Mr. Riggs continued.) Okay.</p> <p>9 A. But I'm not aware at this time, you know -- you</p> <p>10 know, what his -- what he was con -- you know, referring</p> <p>11 to as far as the --</p> <p>12 Q. He does say the phosphorous levels were too high to</p> <p>13 allow those fields to accommodate any more poultry litter</p> <p>14 doesn't he?</p> <p>15 A. I believe that's what he's writing in this.</p> <p>16 Q. Says they couldn't fully develop their plan or put</p> <p>17 any more litter on their fields. Correct? Thirty-one out</p> <p>18 of 37. Is that your understanding of the memo?</p> <p>19 A. Yes.</p> <p>20 Q. Does Peterson Farms have any evidence which would</p> <p>21 show or even suggest that a survey of fields with the</p> <p>22 Illinois River Watershed would produce substantially</p> <p>23 different results?</p> <p>24 MR. McDANIEL: Object to the form.</p> <p>25 A. Different results from what?</p> | <p>1 A. It's probably not in Oklahoma.</p> <p>2 Q. (Mr. Riggs continued.) Well, how is it different</p> <p>3 then? You said it was different because of that</p> <p>4 settlement, so how is it different?</p> <p>5 A. Well, what's different is we use a nutrient</p> <p>6 management team from -- the -- a judge-appointed team, the</p> <p>7 Eucha Spavinaw Watershed. We don't use the NRCS. That's</p> <p>8 how it's different.</p> <p>9 Q. And does that result in more or less litter being</p> <p>10 applied in the Eucha Spavinaw Watershed for the available</p> <p>11 pasture land than the Illinois River Watershed?</p> <p>12 MR. McDANIEL: Object to the form.</p> <p>13 A. I believe that there may be a slight difference in</p> <p>14 the phosphorus indexes, but it's pretty tough in both</p> <p>15 Arkansas and Oklahoma, so --</p> <p>16 Q. Do you know --</p> <p>17 A. -- you know, everyone is -- whether it's in the</p> <p>18 Spavinaw Eucha or in the Illinois in Arkansas or the</p> <p>19 Illinois in Oklahoma, the -- the main difference is, is</p> <p>20 our growers in the Arkansas -- not in the Arkansas, but</p> <p>21 anywhere in the Spavinaw Eucha Watershed, they have people</p> <p>22 come directly from the Spavinaw Eucha nutrient management</p> <p>23 team.</p> <p>24 Q. So are you saying there's more oversight of those</p> <p>25 litter spreading practices in the Eucha Spavinaw Watershed</p> |

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Deposition of Kirk Houtchens - Taken July 26, 2007

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|---|--|
| <p>1 than in the Illinois Watershed?</p> <p>2 A. No, I'm not saying there is at all.</p> <p>3 Q. Is there --</p> <p>4 A. Just different oversight.</p> <p>5 Q. Okay. What is the oversight in the Illinois River</p> <p>6 Watershed of that practice?</p> <p>7 A. That would be the state -- the -- the Oklahoma</p> <p>8 Department of Agriculture, the Oklahoma DEQ, the Oklahoma</p> <p>9 NRCS, the Arkansas DEQ, the Arkansas NRCS. You would have</p> <p>10 to talk to them.</p> <p>11 Q. So tell me again. I'm sorry. I'm just not</p> <p>12 understanding what you're saying the difference is between</p> <p>13 the two watersheds as a result of the settlement. What</p> <p>14 things are happening in the Eucha Spavinaw Watershed</p> <p>15 regarding the application -- land application of poultry</p> <p>16 litter that are -- are not happening in the Illinois River</p> <p>17 Watershed?</p> <p>18 MR. McDANIEL: Object to the form.</p> <p>19 A. The difference is, is that when a grower wants to</p> <p>20 spread his litter or he's considering spreading his litter</p> <p>21 in any of the watersheds, the difference is in our -- in</p> <p>22 the Spavinaw Eucha, a court-appointed or a group, someone</p> <p>23 else comes out and samples his soil versus someone from</p> <p>24 either the Department -- NRCS from Arkansas or Oklahoma.</p> <p>25 Q. (Mr. Riggs continues.) Well, that does not happen</p> | <p>1 their own samples.</p> <p>2 Q. But you know for sure they don't in the Eucha</p> <p>3 Spavinaw Watershed? It's done for them, I believe you're</p> <p>4 saying. Right?</p> <p>5 A. That's correct.</p> <p>6 Q. Prior to this City of Tulsa case settlement were</p> <p>7 there any differences that you know of between litter</p> <p>8 management practices, between the two watersheds?</p> <p>9 A. No.</p> <p>10 Q. This is before the City of Tulsa lawsuit, which you</p> <p>11 compared the practices in those two watersheds with regard</p> <p>12 to how the litter was managed for me?</p> <p>13 MR. McDANIEL: Object to the form.</p> <p>14 A. I don't think there would be any difference. Might</p> <p>15 have been some difference between Arkansas and Oklahoma</p> <p>16 but not based on their watershed, no.</p> <p>17 Q. Let me hand you Exhibit No. 11. This is another</p> <p>18 memo from Ron Mullikin and it does have on this one, I</p> <p>19 believe you agree, his title. It says, "Director of</p> <p>20 Personnel/Environmental Affairs/Corporate Training. Do</p> <p>21 you see that?</p> <p>22 (Wherein, Plaintiff's Exhibit 11 was marked.)</p> <p>23 A. Yes, I do.</p> <p>24 Q. So do you, based upon this, believe that he was --</p> <p>25 one of his job duties at least was environmental affairs?</p> |
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| <p>1 in the Illinois River Watershed, does it? The growing</p> <p>2 samples his own fields. Correct?</p> <p>3 A. No, that's not correct.</p> <p>4 Q. Who does the sampling in the Illinois River</p> <p>5 Watershed?</p> <p>6 A. An employee from the NRCS.</p> <p>7 Q. In every instance that's the case?</p> <p>8 A. I believe. I'm not -- you know, we don't sample</p> <p>9 their fields for them, we just expect them to, you know,</p> <p>10 comply by state and federal laws.</p> <p>11 Q. Do you know who actually pulls the samples that are</p> <p>12 sent to the lab to be analyzed?</p> <p>13 A. I don't.</p> <p>14 Q. Let's say the Illinois River Watershed currently.</p> <p>15 A. Arkansas? Oklahoma? You know, it's got to be very</p> <p>16 specific because they -- depending on what the state laws</p> <p>17 require they're recommended --</p> <p>18 Q. You're saying it's your opinion or belief that the</p> <p>19 state employees or agents of the state in both states</p> <p>20 actually pull the soil samples from the fields and not the</p> <p>21 grower himself?</p> <p>22 MR. McDANIEL: Object to the form.</p> <p>23 A. I don't know for sure, but, you know, I'm thinking</p> <p>24 that, you know, depending on whether you're in Oklahoma or</p> <p>25 Arkansas, I'm not sure they allow the growers to pull</p> | <p>1 A. Yes. Based on the way he's showing his title, I</p> <p>2 would have to agree with that.</p> <p>3 Q. Okay. This memo is dated November 24th, some three</p> <p>4 or four months after the second one. This is the third</p> <p>5 one. The first one was in March, and then July, and now</p> <p>6 in November, all of 1998. Do you agree?</p> <p>7 A. Yes.</p> <p>8 Q. This one goes -- did go to Vic Evans and Dan</p> <p>9 Henderson, Gene Wilmoth, and Janet Wilkerson. You've told</p> <p>10 me who those people are. Those are fairly high level</p> <p>11 executives within the Peterson company. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And this says, the very first sentence, "Time</p> <p>14 continues to pass with no new solutions for dealing with</p> <p>15 excess animal waste and environmental problems it is</p> <p>16 creating."</p> <p>17 Do you know when these memos were going to these</p> <p>18 higher executives in the Peterson company what kind of</p> <p>19 response Mr. Mullikin was getting from any of them?</p> <p>20 A. No, I don't.</p> <p>21 Q. Do you agree with Mr. Mullikin's statement in the</p> <p>22 very first sentence of this memo to the president and</p> <p>23 other high officers of the company that there is excess</p> <p>24 animal waste and it is creating environmental problems?</p> <p>25 MR. McDANIEL: Object to the form.</p> |

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